defendants TNT and Gochis have advised plaintiffs that as of April 30, 1990, TNT, though fully able to do so, will no longer provide the TNT programming service to plaintiffs. Those defendants have been notified that such a refusal to provide the subject programming will cause irreparable damage to plaintiffs and may cause the total destruction of plaintiffs as a competitive programming supplier in the Sacramento market. In spite of that advice, and in total disregard of their solemn contractual obligations, defendants TNT and Gochis maintain that they will take the action heretofore threatened of refusing to deliver the TNT programming to plaintiffs unless temporarily and permanently restrained by this Court.

Wherefore, plaintiffs pray for judgment, preliminary and final, as hereinafter set forth.

SECOND CAUSE OF ACTION
(Declaratory Relief)

19. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 19, inclusive, of this complaint.

20. "Wireless cable" provides a means for distributing an array of video programming to customers -- as cable television does -- but without the need to construct a coaxial cable system. Instead, programming is delivered through various over-the-air frequencies licensed by the Federal Communications Commission, including MDS (multipoint distribution service), MMDS (multichannel multipoint distribution service), OFS (other fixed service) and ITFS (instructional television fixed service) frequencies. Further, the wireless cable radio signal radiates

simultaneously to all points of the compass. For all relevant purposes, using wireless cable PacWest TV can distribute its programming services, such as the TNT programming, to subscribers in its cable television licensed territory in a comparably effective manner as coaxial cable, except that coaxial cable uses wires whereas "wireless cable" frequencies represent microwave transmission technology, and wireless cable facilities cannot provide as great a channel capacity as fiber optic or coaxial cable.

21. The business of cable television, like that of newspapers and magazines, is to provide subscribers with a mixture of news, information and entertainment. Like newspapers, cable television companies use a portion of their available space (channels) to reprint (or retransmit) the communications of others, such as the TNT programming, to their subscribers. A cable television company is not a public utility, but rather is a recognized member of the media and is a First Amendment speaker and publisher.

22. In 1983, Bruce Fite and Joseph Benvenuti desired to engage in the cable television business within the City of Sacramento and for that purpose formed the partnership known as Pacific West Cable Company ("PacWest"). Between 1983 and 1987 PacWest's efforts to enter the Sacramento cable market were thwarted by, among other things, an absolute prohibition upon that activity imposed by the City of Sacramento, the County of Sacramento, and the joint agency they created to oversee cable television, the Sacramento Metropolitan Cable Television Commission (collectively, the "Sacramento Government

Agencies"). The Sacramento Government Agencies had earlier determined to issue only one franchise or license for cable television activities and to deny to all others that right.

23. Faced with no alternative, in September 1983, PacWest Co. sued the City and County of Sacramento to vindicate its right to enter the Sacramento cable market. Almost four years earlier, in July 1987, following jury verdicts favorable to PacWest Co., the Sacramento Government Agencies abandoned their absolute prohibition on competition in the Sacramento cable market. Thus, in 1987, PacWest Co. began preparing to, and began constructing a competitive cable system primarily using wire facilities.

24. By the time such authorization was actually issued, however, Scripps and its subsidiary, SCT, the cable company selected by the Sacramento Government Agencies in 1983 to receive a monopoly franchise, had already substantially completed construction of its system covering all of the Sacramento Metropolitan area. In late 1987, Scripps sought and, in exchange for the payment of a large sum of money (in excess of $15 million), obtained modifications of the Scripps franchise agreement and the ordinance regulating the same, from the Sacramento Government Agencies. These modifications allowed

25. By the nature of the construction of coaxial facilities for cable television and the impediments placed in the licensing procedures prescribed by the governmental agencies, the Scripps system had long periods of advance notice as to each area of the Sacramento market that PacWest Co. could serve. This enabled Scripps to engage in discriminatory pricing practices, including the giving away of free service and/or gifts (*e.g.*, color television sets) to subscribers in the area PacWest Co. was preparing to serve, and to offer various enticements to potential cable subscribers to prevent them from subscribing to PacWest Co.'s service, with the result that PacWest Co. could not secure enough of a subscriber base in its limited area of coaxial wire construction to compete in the market, thus forcing plaintiff to suspend its coaxial cable construction.

26. In the Fall of 1988, in an effort to offset the discriminatory pricing of the Scripps system, PacWest Co. formed plaintiff PacWest TV as a joint venture with a company known as PCTV to provide a reduced tier of cable service (fewer channels) at a competitive price simultaneously throughout its licensed area.

27. Between the time the TNT programming was launched (October 3, 1988) and through November 1989, PacWest had distributed TNT programming only through its system of coaxial cables, which at that time reached relatively few subscribers in the Sacramento area. However, commencing in approximately November 1989, with the receipt and installation of appropriate equipment, plaintiffs began distributing TNT programming using

their wireless facilities in conjunction with its coaxial cable. The TNT service has been well received by the public, and plaintiffs' subscriber count has been steadily growing in a market containing over 340,000 homes.

28. Shortly after plaintiffs had begun distribution of TNT programming by supplementing their wired service with wireless service, and following contacts between TCNS account representatives and the Scripps system, defendant Gochis notified plaintiffs that carriage of TNT programming using wireless technology was not consistent with the terms of the Affiliate Agreement. Defendant Gochis did not and could not identify any portion of the Affiliate Agreement which prohibited the use of such technology by a cable television system distributing TNT programming.

29. Thereafter plaintiffs arranged for meetings with defendant Gochis and other representatives of the Turner defendants and attempted to ascertain how or why the Affiliate Agreement prohibited the distribution of TNT programming using the wireless technology in conjunction with its cable facilities. Plaintiffs offered to discuss, negotiate and even to appropriately amend its Affiliate Agreement with TNT in any reasonable fashion, but the offer was arrogantly declined.

30. Despite such efforts at negotiations, by letter dated March 6, 1990, TBS's general counsel demanded that plaintiffs cease distribution of TNT programming using wireless frequencies with its coaxial facilities, by March 31, 1990 (25 days) (since extended to April 30, 1990); and has stated that if plaintiffs do not comply, the Turner defendants would terminate the

Affiliate Agreement and discontinue and deauthorize completing its transmission of TNT programming to plaintiffs, which in turn would be unable to distribute TNT programming to its cable subscribers. A true and correct copy of the termination letters are attached hereto as Exhibits "2" and "3," respectively, and incorporated herein by this reference.

31. The Turner defendants and defendant Gochis have, in

THIRD CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

34. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1 through 32, inclusive, of this complaint.

35. Under Georgia and California law, there is implied in every contract a covenant of good faith and fair dealing that, among other things, obligates the parties to deal honestly with each other.

36. The Turner defendants breached the implied covenant of good faith and fair dealing when it threatened to unilaterally terminate the Affiliate Agreement unless plaintiffs cased distribution of TNT programming through wireless cable.

37. As a direct and proximate result of the Turner defendants breach of the Affiliate Agreement, plaintiffs have suffered and will suffer damages in a sum not presently ascertainable, but which exceed the jurisdictional limit of this Court. Plaintiffs will seek leave to amend this Complaint at such time as their damages are ascertained.

Wherefore plaintiffs pray judgment as hereinafter set forth.

FOURTH CAUSE OF ACTION
(Specific Performance)

38. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 36, inclusive, of this Complaint.

39. Unless the Court specifically enforces the terms, conditions, and provisions of the Affiliate Agreement by

ordering the Turner defendants to continue providing TNT programming through the terms of the Affiliate Agreement, plaintiffs will suffer irreparable injury.

Wherefore plaintiffs seek judgment as hereinafter set forth.

FIFTH CAUSE OF ACTION
(Tortious Interference With Contractual Relations)

40. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 39, inclusive, of this Complaint.

41. The Turner defendants and Gochis knew or should have

disrupt plaintiffs' contractual relationship with their various subscribers, and unless restrained the Turner defendants and Gochis will cause plaintiffs great and irreparable injury, for which damages would not afford adequate relief nor completely compensate for the resulting injury to plaintiffs' business reputation and goodwill.

45. As a direct and proximate result of defendants' tortious interference with plaintiffs' contractual relations, plaintiffs has suffered and continues to suffer damages in a sum not presently ascertainable, but which exceed the jurisdictional limits of this Court. Plaintiffs will seek leave to amend this Complaint at such time as their damages are ascertained.

46. The aforementioned acts of the Turner defendants and Gochis were willful, oppressive and malicious, and plaintiffs are entitled to punitive damages in an amount not less than $25 million.

SIXTH CAUSE OF ACTION
(State Cartwright Act)

47. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 46, inclusive, of this Complaint.

48. This claim arises under the Cartwright Act, Cal. Bus. & Prof. Code §16600 *et seq*.

49. The business of cable television is relatively young; it developed initially, following the introduction of VHF television broadcast stations, as a coaxial wire method of providing an antenna service; it then evolved, with the aid of

microwave and communication satellites using radio frequencies, into an independent medium providing expanded networks of news, information and entertainment; and over a period of only about 30 years it accomplished the "wiring" of the nation. As the industry so developed, local government found it advantageous to limit access to the market, and the companies which were able to get into the business found it advantageous to cooperate with local government to so limit competition.

50. As time passed, consolidation of cable television companies occurred creating MSOs which were and are able to use their selective purchasing power to influence and to control the business practices of programming suppliers. The Turner defendants, once an independent force in the industry, are now substantially owned by MSOs and are controlled by a Board of Directors, the majority of which are representatives of such MSOs.

51. Plaintiffs allege on information and belief that it is the policy of certain MSOs, sued herein as Does, to discourage and impede the development of any viable form of competition for the providing of video programming at the retail level by means of competitive cable companies, and that among other acts taken to maintain local monopolies for such services, the Doe defendants have exercised their ability to control the business practices of program suppliers to require encryption of satellite signals, to demand and receive discounts in pricing not justified by the logical business interests of such program suppliers, and to refuse to deal with those who could hope to compete with their local cable monopolies such as "wireless

cable" operators based on the claim that such companies are not subject to the demands of local government for tariffs, penalties, fees and forfeitures demanded of cable companies.

52. Plaintiff is a licensed cable operator, differing only from such MSOs in that it has indicated a willingness to

such anticompetitive actions and threatened actions, plaintiffs will continue to suffer great and irreparable harm.

Wherefore plaintiffs pray judgment as hereinafter set defendants from engaging in these practices in the future. Plaintiffs, therefore, both on their own behalf and on behalf of the general public, are entitled to an order enjoining defendants from engaging in the practices complained of herein pursuant to Business and Professions Codes §§17203 and 17204.

61. Plaintiffs allege on information and belief that defendants have acquired money from persons as a result of the acts of unfair competition alleged herein. Consequently, the court should order defendants to make restitution of all sums obtained as a result of their acts of unfair competition.

WHEREFORE, plaintiffs pray judgment as hereinafter set forth.

<u>EIGHTH CAUSE OF ACTION</u>
(Conspiracy)

62. Plaintiffs reallege and incorporate herein by reference the allegations contained in paragraphs 1 through 61, inclusive, of this Complaint.

63. Prior to December 1989 the Turner defendants, Gochis and the Doe defendants knowingly and willfully conspired and agreed among themselves to damage plaintiffs by depriving it of the benefits of the Affiliate Agreement and plaintiffs' contractual relationships with their subscribers by depriving plaintiffs of TNT programming and their ability to distribute

65. The Turner defendants and Gochis have acted with oppression and malice and plaintiffs are entitled to punitive damages in a sum not less than $25 million.

Wherefore plaintiffs pray judgment as hereinafter set forth.

NINTH CAUSE OF ACTION
(Promissory Estoppel)

66. Plaintiffs reallege and incorporate by reference herein by reference the allegations contained in paragraphs 1 through 65, inclusive, of this Complaint.

67. Plaintiffs reasonably relied on the express representations and actions of the Turner defendants' agents and employees directing and approving the Affiliate Agreement.

68. In reliance on such representations and actions, plaintiffs distributed TNT programming to their subscribers as part of their basic cable service, and those subscribers reasonably expect to continue receiving TNT programming.

69. The Turner defendants knew or should have known that plaintiffs continue to expend substantial sums to improve and extend their facilities and business, and that, in reliance on the Turner defendants' representations and actions, plaintiffs would continue to distribute TNT programming to the mutual benefit of both parties.

70. The Turner defendants have benefited from plaintiffs' distribution of TNT programming on plaintiffs' hard wire and wireless systems beyond the receipt of payments from plaintiffs, in the form of advertising revenues and goodwill and recognition garnered with plaintiffs' subscribers.

71. Plaintiffs reasonably relied on the Turner defendants' implied promise to negotiate in good faith with plaintiffs for the distribution of TNT programming and not to refuse to permit distribution without just cause.

72. In reliance on the Turner defendants' implied promise to negotiate in good faith, and not to refuse to permit distribution without just cause, plaintiffs have incurred substantial expense and expended substantial effort.

73. As a proximate result of the Turner defendants' breach of their implied agreement to allow plaintiffs to carry TNT programming on their wireless system under the Affiliate Agreement, plaintiffs will suffer immediate and irreparable

ON THE SECOND CAUSE OF ACTION

2. For a declaration by the Court that plaintiffs are entitled, pursuant to the Affiliate Agreement, to distribute TNT programming through wireless cable;

3. For a declaration by the Court that the Turner defendants are prohibited from discontinuing or deauthorizing transmission of TNT programming to plaintiffs through the term of the Affiliate Agreement;

ON THE THIRD CAUSE OF ACTION

4. For general damages according to proof, with

11. For such other and further relief as the Court may deem just and proper.

FARROW, SCHILDHAUSE & WILSOI

Dated: April 6, 1990

James C. Parker
Attorneys for Plaintiffs
Pacific West Cable Company
and Pacific West Cable
Television

EXHIBIT 2

Based on the foregoing DISCUSSION defendant's motion for summary judgment with respect to the individual plaintiffs and the plaintiff class is hereby DENIED.

With respect to the individual plaintiffs and the plaintiff class, this court hereby enjoins defendant from any practices, policies, customs, and usages which have herein been identified as discriminatory. To this end, the court advises that the defendant respond to this declaratory and injunctive relief in at least the following ways: [40]

—Contact community and female orga-

PACIFIC WEST CABLE COMPANY, Plaintiff,

v.

CITY OF SACRAMENTO, CALIFORNIA, a municipal corporation; and County of Sacramento, California, a municipal corporation, Defendants.

Civ. No. S-83-1034 MLS.

United States District Court, E.D. California.

Aug. 13, 1987.

BI
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LIFORNIA,
and County
a municipal

ILS.

Court,

Cite as 672 F.Supp. 1322 (E.D.Cal. 1987)

4. Declaratory Judgment ⟹128

Request for injunctive and declaratory relief against old cable television ordinance was not moot, where second lawsuit against new ordinance created reasonable possibility that permanent licenses would not be issued under new ordinances or, if they were, they could be subsequently declared invalid.

5. Constitutional Law ⟹90.1(9)
Telecommunications ⟹449(1)

Cable television operator's speech was protected by First Amendment. U.S.C.A. Const.Amend. 1.

10. Constitutional Law ⟹90(3)

Time, place and manner restrictions are acceptable so long as they are designed to serve substantial government interest and do not unreasonably limit alternative avenues of communication. U.S.C.A. Const.Amend. 1.

11. Municipal Corporations ⟹592(1)

Section of California Public Utilities Code imposing upon public utilities a mandatory duty to make "surplus space" on utility poles and in utility easements available for use by cable television operators did not in any way "preempt" local regulation of cable television. West's Ann.Cal.

16. Telecommunications 🔑449.10(2)

Cable television system operator was entitled to injunctive relief with respect to its request for permission to build and operate its cable television system, since operator had no adequate remedy at law and would suffer irreparable harm if equitable relief was denied.

Harold R. Farrow, Robert M. Bramson, Siegfried Hesse, Farrow, Schildhause & Wilson, Oakland, Cal., Richard Alexander, The Boccardo Law Firm, San Jose, Cal., for plaintiff.

Michael A. Small, Kathleen M. McGinnis, Preston, Thorgrimson, Ellis & Holman, Seattle, Wash., W. Young, K. Broerick, Preston, Thorgrimson, Ellis & Holman, Washington, D.C., James Jackson, Sacramento City Atty., L.B. Elam, Deputy County Counsel, Sacramento County, Sacramento, Cal., for defendants.

Stephen L. Goff, Boutin, Lassner, Gibson, Terry & Delehant, Sacramento, Cal., for amicus curiae.

MEMORANDUM DECISION, CONCLUSIONS OF LAW AND ORDER FOR JUDGMENT

MILTON L. SCHWARTZ, District Judge.

Jury trial of this action commenced on March 23, 1987. After 29 days of trial, the matter was submitted to the jury on June 3 on a series of special verdicts. The jury returned twenty-two of the special verdicts on June 5. After entering those verdicts, the court asked the jury to continue deliberating on the remaining special verdicts. On June 9, the jury notified the court that it had reached unanimous agreement on eight of the special verdicts but were hopelessly deadlocked on the remaining five verdicts. The court accepted and entered the additional eight verdicts and then charged the jury.

The court conducted one additional h ing and received two sets of briefs prior to the hearing and one after) on issue of the proper judgment, if any, tc entered on the special verdicts. The r ter has now been submitted. The foll ing constitutes the court's judgment cluding its analysis and conclusions, on jury's special verdicts and in response plaintiff's request for injunctive relief.

I. BACKGROUND

A. *The Issue of the Franchise* [1]

In November of 1981, the Sacramer City Council and County Board of Super sors enacted substantially identical ca television [2] ordinances (the "cable televisi ordinance"). The ordinance established t exclusive procedure for awarding cal television franchises. Under the cable te vision ordinance, any such franchise deemed to constitute a contract betwe the franchisee and the Sacramento Met politan Cable Television Commission (t "cable commission"), which is a joint po ers authority formed pursuant to Califorr law by defendants and two other citie Furthermore, the possession of a franchi is a requirement for access to utility eas ments and underground conduits in Sacr mento.

Pursuant to the provisions of the cab television ordinance, a request for propo als for the award of a cable television fra chise within the city and county was issue Defendants received four proposals. Afte conducting various meetings and hearing on the proposals and considering the re ports prepared by the consultant retaine by the county, defendants selected a firn called United Tribune Cable of Sacrament as the tentative franchisee.

1. Much of the information is taken from the stipulated statement of facts. A slightly modified version of this statement of facts was read to the jury as jury instruction number 15.

2. Cable television companies may distribute, among other things, news, information and entertainment to viewers. It does so by transmit ting electronic signals to and from a centra location (a "head end") through cables to the television sets of subscribers. These cables are attached to public utility poles or placed ir underground conduit.

Further public hearings, meetings and or more additional hearings, t

Angeles, 754 F.2d 1396, 1411–15 (9th Cir. 1985), *aff'd on other and narrower grounds*, 474 U.S. 979, 106 S.Ct. 380, 88 L.Ed.2d 333 (1986).

II. SPECIAL VERDICTS

At the close of evidence and final argument, the case was submitted to the jury on general instructions and eighteen special verdicts (many of which had several subparts). *See* Fed.R.Civ.P. 49(a).[4] The court used special verdicts over the objection of plaintiff, which argued that it was entitled to a general jury verdict and instructions on the law.

A. *Advantages of Special Verdicts*

There were several advantages to using special verdicts in this case. The general verdict is usually either all wrong or all right because it is an inseparable and inscrutable unit. 5A Moore's Federal Practice ¶ 49.02 (2d ed. 1986) (quoting Sunderland, *Verdicts, General and Special*, 29 Yale L.J. 253, 259 (1920)). Special verdicts, on the other hand, isolate fact findings in such a way as to allow reviewing courts to make determinations as a matter of law while preserving the jury's role as a fact finder. Brown, *Federal Special Verdicts:*

trial in the event of an error of la
misapplication of law to the facts.
342, 348; *see also* Wright and Mille
eral Practice and Procedure, § 2
494–95 (1971); Wright, *The Use of S*
Verdicts in Federal Court, 38 F.R.
202 (1965). The Second Circuit en
the use of special verdicts in *Berkey*
Inc. v. Eastman Kodak Co., 603 F.
(2d Cir.1979), *cert. denied*, 444 U.S
100 S.Ct. 1061, 62 L.Ed.2d 783 (19

We note *en passant*, however,
large and complex cases such a
involving many novel legal issue
better practice would have been
quire special verdicts or the subr
of interrogatories to the jury pursu
Fed.R.Civ.P. 49. In that way the r
a jury trial of all factual issues
served while the probability of a
ous and expensive retrial is re
See SCM Corp. v. Xerox Corp.
F.Supp. 983, 988–90 & nn. 1
(D.Conn.1978), *remanded on*
grounds, 599 F.2d 32 (2d Cir.1979).
tainly the already difficult task
viewing a case of this magnitude
have been eased somewhat for this
if we knew precisely what the
findings were on several specific f

Circuit has also approved the use of special verdicts as facilitating its review for harmless error. *See Pacific Greyhound Lines v. Zane*, 160 F.2d 731, 737 n. 6 (9th Cir. 1947).

The court is especially concerned about the possibility of legal errors in this case inasmuch as the Supreme Court has explicitly declined to decide the legal issues raised by cable television franchising in the absence of a fully developed factual record, *City of Los Angeles v. Preferred Communications, Inc.*, 106 S.Ct. at 2037–38, even though it did note that where speech and conduct are joined in a single course of action, first amendment values must be "balanced" against competing societal interests. *Id.* at 2038 (citing to *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 805–07, 104 S.Ct. 2118, 2128–30, 80 L.Ed.2d 772 (1984), and *United States v. O'Brien*, 391 U.S. 367, 376–77, 88 S.Ct. 1673, 1678–79, 20 L.Ed.2d 672, *reh'g denied*, 393 U.S. 900 (1968)).

The Ninth Circuit also relied on *Vincent* and *O'Brien* in holding that a cable company's first amendment claims should not be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Preferred*, 754 F.2d at 1402. In so doing, the Ninth Circuit did not explain what the relationship of the lines of inquiry used in *Vincent* and *O'Brien* should be in the cable television franchising context, except to say that its conclusion after applying *O'Brien* is "aided" by the public forum doctrine applied in *Vincent* and other cases. *See id.* at 1407.

The challenges presented by the developing state of the law are compounded by the difficulty of determining what constitutes a question of law. The distinction between questions of fact which must be resolved

v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), in defamation cases. *See Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 498–512, 104 S.Ct. 1949, 1958–65, 80 L.Ed.2d 502, *reh'g denied*, 467 U.S. 1267, 104 S.Ct. 3561, 82 L.Ed.2d 863 (1984).

The Supreme Court and Ninth Circuit have also both held that the balancing of interests which occurs in cases in which an employee is discharged for allegedly exercising first amendment free speech rights is one of law. *Connick v. Myers*, 461 U.S. 138, 148 n. 7, 150 n. 10, 103 S.Ct. 1684, 1690 n. 7, 1692 n. 10, 75 L.Ed.2d 708 (1983); *Loya v. Desert Sands Unified School District*, 721 F.2d 279, 281 (9th Cir.1983). In fact, the Ninth Circuit has held that it is error for a trial court to leave the balancing to the jury. *Loya*, 721 F.2d at 281–82; *see also Keller v. City of Reno*, 587 F.Supp. 21, 23 n. 4 (D.Nev.1984). This has prompted some courts to conclude that the extent of protection afforded by the first amendment is ultimately a question of law and that the jury's function is to find the underlying facts to which the legal standard is ultimately applied. *Kim v. Coppin State College*, 662 F.2d 1055, 1062 (4th Cir.1981) (cited in *Keller*, 587 F.Supp. at 23 n. 4); *but see Joyner v. Lancaster*, 815 F.2d 20, 23 (4th Cir.1987) (jury has no role to play; entire matter for court determination).

The use of special verdicts enables the jury to find these underlying facts and then allows the court to apply the law to the facts as found. *See Quaker City Gear Works, Inc. v. Skil Corp.*, 747 F.2d 1446, 1453 (Fed.Cir.1984) (citing 5A Moore's Federal Practice, § 49.02 at 49–8 (2d ed. 1984)), *cert. denied*, 471 U.S. 1136, 105 S.Ct. 2676, 86 L.Ed.2d 694 (1985). This procedure assigns to the trial judge the responsibility of ing *Moore*'s with approval), instructions which, in this case, may result in the jury performing tasks which must be performed by the judge. Because of the uncertainty in the judge/jury division of labor, special verdicts assure that the jury does not impermissibly decide a question of law. *See* Weiner, *The Civil Jury Trial and the Law-Fact Distinction*, 54 Cal.L.Rev. 1867, 1867–68 (1966) (referring generally to Coke's dichotomy and the respective provinces of judge and jurors in a civil case); *but see* Parker, *supra*, at 550–56 (special interrogatories under Federal Rule of Civil Procedure 49(b) represent an appropriate "middle course" between the general and special verdict procedures).

B. *The Jury's Special Verdicts*

The special verdicts themselves, together with the jury's answers, are attached as appendix A. The following is a narrative summary of the jury's findings.

The jury found that plaintiff had the technical and financial capabilities to construct and operate a cable television system in the Sacramento metropolitan area, even though they determined under the instructions given them that no amount of damages should be awarded to plaintiff. The jury also found that defendants had not left open ample alternative channels of

lic and workers or noise, visual clu environmental and/or aesthetic probl Even so, the jury said that defendants not use these problems as a pretext justifying their franchising process.

As for whether cable television is a n ral monopoly, the jury found that it not. In other words, the jury was suaded that "head-to-head" competitic likely to occur and endure in the Sacrar to market. Moreover, the jury conclu that this justification was a sham or text for granting a single cable telev franchise and that defendants used justification to promote the making of payments and the provision of in kind vices by the company ultimately selecte the franchisee. They also concluded this justification was used to obtair creased campaign contributions for elected officials.

On the other hand, the jury agreed defendants that the public as a whole b fits from equal and uniform cable vision service throughout the Sacram community and that defendants' fran ing process encourages such uniformit a greater degree than would be achiev its absence. The jury also found that public obtains significant benefits from provision of public access channels, pro tion facilities, technical assistance